

OGC HAS REVIEWED.

MEMORANDUM

24 January 1955

SUBJECT: Dual Compensation Case - Summary of Facts

1. The individual in question is providing services to this Agency overseas under a three-year contract which became effective 6 January 1954. He is not considered by the Agency as an employee of the Government but rather as an independent contractor. His contract provides specifically as follows on this point: "You are not an employee of the United States Government under this agreement and are not entitled to any benefits normally incident to an employee status, except as specifically enumerated herein." The services and compensation of the individual are covered by the following contractual language: "The United States Government hereby contracts with you for the purchase of certain information and related services of a confidential nature under the following terms and conditions: *** In full consideration for the purchase of such information and services you will be paid an amount calculated at the rate of \$4,800.00 per annum." The manner in which this man obtains information which he conveys to us is largely up to him. He does not operate under close supervision and does not have regular office hours or even maintain an office. He meets with our representatives at odd hours and as the situation demands. Projects are assigned to him from time to time, and his activities are carried on in fields designated by the Agency.

2. The Agency pays the expense of travel to and from the overseas station and of travel there on our business, as well as other operational expenses. His contract is terminable by the Agency on thirty days' notice, or without any notice in the event of breach of its provisions. There is provision for a monthly allowance at a set figure for a maximum period of three months on first arrival at the overseas station or until adequate permanent quarters have been secured. There is no other provision for quarters or cost-of-living allowance or payment.

3. It is not contemplated by the contract, and there is no provision therein, for this man to have the benefits of Civil Service Retirement, the various leave acts, or the other perquisites of Government employment. However, there is provision for him to receive under the contract, but not as a Government employee, death and disability benefits "equal to those authorized under the Federal Employee's Compensation Act" and continuance of pay "in a manner similar to that set forth in the Missing Persons Act." Upon completion of the contract, the individual is entitled to be returned to the United States and to receive pay for a period of thirty days, during which time he is not required to provide services or information.

4. The dual compensation question did not arise when this man began his service with the Agency because it appeared at that time that his disability was combat incurred. He was informed on 5 April 1946 by the Veterans' Administration that the dual compensation provisions of the Retired Pay Act of 1932 did not apply "since the War Department states that the disability on which your retirement is predicated was incurred in combat." However, the Army subsequently revised its findings and in October 1954 notified the individual that he was subject to the dual compensation statute and that his retired pay was suspended as of September 1954.